Supreme Court, U.S.
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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

WOLVERINE, LTD., SHELDON M. SISSON, A PARTNER OTHER THAN TAX MATTERS PARTNER; WOODCHUCK, LTD., SHELDON M. SISSON, A PARTNER OTHER THAN TAX MATTERS PARTNER,

PETITIONERS

V.

COMMISSIONER INTERNAL REVENUE SERVICE,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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23 pp

QUESTIONS PRESENTED FOR REVIEW

1. Is there an appearance of impropriety and/or a conflict of interest:

(A) when an Internal Revenue Service (IRS) attorney leaves the Los Angeles office of the IRS, and

(B) two or three weeks later appears as co-counsel for the taxpayers in a Los Angeles case being tried before the Tax Court, and

(C) concedes the principal argument of the taxpayers?

2. May the IRS refuse to honor a settlement signed by IRS officials who have the authority to bind the IRS--the District Director, the Chief of Appeals, and the Chief of Examinations?

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OPINIONS BELOW IN THIS CASE

The decision of the Court of Appeals for the Ninth Circuit is not reported. The decision appears at Appendix, Volume I, page 1 et. seq.

The decision of the United States Tax Court, T.C. Memo. 1992-669, is not officially reported. The decision is unofficially reported at 1992 T.C.M. (RIA) Par. 92,669 (1992) and 64 T.C.M. 1342 (CCH) (1992). The decision appears at Appendix, Volume I, page 3 et. seq.

JURISDICTION OF THE SUPREME COURT

1. The judgment of the Court of Appeals for the Ninth Circuit was entered on October 24, 1994. Rule 14.1.(e)(i) of the Rules of the Supreme Court of the United States (hereinafter, "Rule").

2. There was no order respecting a rehearing before the Court of Appeals for the Ninth Circuit. There was no extension of time sought or granted in which to file this petition for writ of certiorari. Rule 14.1.(e)(ii).

3. Section 7482 (a)(1) of the Internal Revenue Code confers jurisdiction in the Supreme Court of the United States to review the judgment of the Court of Appeals for the Ninth Circuit by writ of certiorari.

4. The United States Tax Court, the court of first instance, had federal

jurisdiction pursuant to Sections 6226(f) and 7442 of the Internal Revenue Code. Rule 14.1.(i).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED IN THE CASE

Aside from the jurisdictional provisions cited, supra, no constitutional provisions, treaties, statutes, ordinances or regulations are deemed to be involved in this case.

FACTUAL STATEMENT OF THE CASE

About 4,000 partners invested a total of about $200,000,000 in several hundred partnerships each owning real property leased to the United States Postal Service, the General Services Administration or various public utilities (the Schulman partnerships).

In 1988 an attorney from the

Office of the District Counsel of the IRS in Los Angeles, Karl Zufelt, left the IRS. Two or three weeks after he left the IRS, Zufelt switched sides and appeared as co-counsel in a tax case affecting a husband and wife in one Schulman partnership case being tried before the United States Tax Court in Pasadena CA.

The case in which Zufelt appeared is Marine v. Commissioner, 92 T.C. 958 (1989), aff'd without published opinion, 921 F.2d 280 (9th Cir. 1991), cert. denied, 112 S.Ct. 77 (1991). The adverse decision in Marine later was used by the IRS to convince other partners in other cases to concede.

I was a witness at the trial in Marine. I learned, after the trial, from Benjamin Duncan, whose name appears in Marine as one of the counsel

for the IRS, that Zufelt, one of the two attorneys for the taxpayers in Marine, had just left the IRS.

At a motions session prior to the trial of Marine, counsel for the Marines conceded that the Settlement Plan Agreement, infra, was not binding on anyone. The transcript of that motions session forms part of the record below.

Zufelt's name does not appear in the official reports of the Tax Court as co-counsel in the case. There is no indication in Marine that a former IRS attorney had appeared on behalf of the Marines or that the Marines knew that they were represented by a former IRS attorney or that the former IRS attorney had conceded, in my opinion, the principal argument of the taxpayer.

After months of negotiations, in August, 1983, a "Settlement Plan

Agreement" was signed by (1) IRS officials in Los Angeles and (2) the general partner. The agreement governed (A) the tax consequences to the partners of their investment in the partnerships and (B) taxed certain gains and income to the general partner.

The agreement, Appendix Volume II, page 45, et. seq., was signed on behalf of the IRS by the District Director, and the Chief of Appeals, and the Chief of Examinations.

ARGUMENT FOR ACCEPTANCE OF THE PETITION FOR WRIT OF CERTIORARI

What happened in this case is clear. There also is more to this case than meets the eye at the present time.

Why should the Supreme Court exercise its power of supervision over the judiciary in accordance with Rule 10.1.(a)?

Rule 7 of the Rules of the Supreme Court presents the accepted standard for avoidance of conflict of interest and appearance of impropriety. The Rule provides in part:

> "[N]or shall any person after leaving employment in this Court participate, by way of any form of professional consultation or assistance, in any case pending before this Court or in any case being considered for filing in this Court, until two years have elapsed after separation; nor shall a former employee ever participate, by way of any form of professional consultation or assistance, in any case that was pending in this Court during the employee's tenure."

Something is wrong when an IRS attorney is allowed to switch sides and concede the taxpayers' principal argument. Why did the local IRS attorneys not object to Zufelt's appearance in Marine?

The Tax Court should not have allowed an IRS attorney to change sides

and participate in the concession.

The Ninth Circuit should not have allowed an IRS attorney to change sides and participate in the concession.

The Tax Court dismissed my complaint about the issue of former employment as follows:

> "Petitioner's attacks on one of the counsel [Karl Zufelt] for the taxpayers in Marine are based on that counsel's former representation of respondent. We can draw no inference from this fact. [Appendix Volume I, page 44]"

The portion of my complaint about Zufelt's participation in the concession of the Settlement Plan Agreement was ignored.

The Tax Court's citation of Estate of [Nat "King"] Cole v. Commissioner, T.C. Memo. 1973-74, to justify what Zufelt did in Marine, is not relevant. I tried Cole for the IRS prior to 1973.

I left the IRS in August 1974. I joined Harry Margolis in 1979. I did not leave the IRS, appear in Cole a couple of weeks later on behalf of the taxpayer, and then concede the main issue of the taxpayer.

The Settlement Plan Agreement

Why should the Supreme Court exercise its power of supervision in accordance with Rule 10.1.(a)?

The IRS should be required to honor its agreements signed by IRS officials who have the power to bind the IRS.

The Tax Court cited Boulez v. Commissioner, 76 T.C. 209 (1981), affd. 810 F.2d 209 (D.C. Cir. 1987) for the non-binding effect of an agreement with an IRS agent. The agent was more than an agent. He was the Director of the Office of International Operations.

The Department of Justice in its brief in Boulez, supra, before the Circuit took the position that had the agreement with the Director of the Office of International Operations been in writing the agreement would have been binding.

The Tax Court below stated:

> "The cases of Karme [v. Commissioner, 73 T.C. 1163 (1980) affd. 673 F.2d 1062 (9th Cir. 1982)] and Marine [supra] involved facts indistinguishable from those in this case (although the evidence in this case contained many gaps)."

Karme is not relevant. It precedes the signing of the Settlement Plan Agreement (sometimes hereinafter "SPA" or "agreement") and is part of the background that led both sides to sign the Settlement Plan Agreement in 1983.

The Settlement Plan Agreement calls for "utmost good faith." After the agreement was signed an IRS attorney,

one of the IRS attorneys who appears in Marine, in clear violation of the SPA, demanded (1) $50,000,000.00 in liquidated damages and (2) that Schulman agree to do nothing within the scope of the Internal Revenue Code for the remainder of his life as a condition for proceeding with the agreement. This hardly qualifies as "utmost good faith."

In accordance with the terms of the Settlement Plan Agreement and in reliance upon the SPA, both Wolverine and Woodchuck claimed only 70% of what they otherwise would have been entitled to claim as a deduction.

We provided all the documentation required under the terms of the SPA on a timely basis. What remained to be done to complete the terms of the Settlement Plan Agreement for the partners of Wolverine and Woodchuck? A letter from

the IRS that said: "In accordance with the terms and conditions of the Settlement Plan Agreement between the IRS and your general partner, this is to inform you the deduction you claimed from [blank] partnership is accepted" is all that was needed.

If ever there were a tortious bad faith denial of a contract and "stonewall"ing within the California framework of Seaman's Direct Buying Service, Inc. v. Standard Oil Co., 36 Cal.3d 752, 206 Cal.Rptr. 354, 686 P.2d 1158 (1984), this is the case.

Instead of "see you in court," we find the equivalent of "drop dead." If I had been Gerald L. Schulman, the partnerships would have sued the IRS in tort under Seaman's and sought specific performance.

Was the Settlement Plan Agreement a

"conditional and precursory agreement?" Was the Settlement Plan Agreement a "routine example of preliminary settlement negotiations?" Since when do the District Director, and the Chief of Examinations and the Chief of Appeals all get involved in routine examples of preliminary settlement negotiations?

Nothing in Sections 2.6 or 4.1 of the SPA stood in the way of completion. Appendix, Volume II, page 48, et. seq.

Sec. 2.6(a)(i): The SPA was signed.

Sec. 2.6(a)(ii): There was subsequent "actual verification of tax due in accordance with the principles established under the Settlement Plan Agreement."

Sec. 2.6(b)(i): As for a final settlement agreement, for 1983, all that was needed was a form letter from the

IRS containing a few sentences.

Sec. 2.6(b)(ii): Schulman did communicate to investors with respect to the settlement proposal.

Sec. 2.6(b)(iii): As for a final settlement agreement, for 1983, all that was needed was a form letter from the IRS containing a few sentences.

Sec. 2.6(b)(iv): Final determination of Schulman promoter income was the responsibility of the IRS.

Sec. 3.7 of the agreement spells out how promoter income is determined.

Sec. 2.6(b)(v): The trust(s) were formed.

Sec. 4.1(a): There never was an indication by either side that the "taxes determined to be due under the terms of the within settlement proposal" were not reasonable under all of the

circumstances.

Sec. 4.1(a) also is modified by the following:

1. Sec. 4.1(a)(i): Trust income for 1983 and subsequent years will be determined in accordance with the terms of the SPA and the result of that determination will not affect the agreement.

2. Sec. 4.1(a)(ii): The examination of Schulman's 1040 tax returns pertaining to non-post office items shall be accomplished at a later date and the result thereof shall not affect the SPA.

3. Sec. 4.1(b): The audit result of Schulman's 1040s for 1977 through 1982 must be acceptable to Schulman and to the IRS but (i) the result of the audit for 1983 shall not affect the SPA and (ii) the examination of Schulman's

1040s pertaining to non-post office items shall be accomplished at a later date and the result shall not affect the SPA.

Any fair reading of section 4.2 of the agreement is that there is a binding obligation to go forward with the agreement unless (1) section 4.1 is not completed within a time certain and (2) written notice to the other party of the cancellation of the agreement is given.

No written notice of cancellation ever was given. The agreement was binding. All that was missing was a little good faith on the part of the IRS.

As for the intellectual rationale for applying the doctrine of equitable estoppel against the government with the utmost caution and restraint: It is good public relations for a government

to turn square corners with its citizens. It is bad public relations for a government to do anything else.

We did not have to invest in the partnerships after the agreement was signed by three officials of the Internal Revenue Service, the District Director, the Chief of Examinations, and the Chief of Appeals, who had the power to bind the IRS. Had we known what was to come we could have done something sensible -- such as buy short term tax free municipal bonds. In retrospect the unreasonable conduct on our part was to expect that the IRS would not try to wiggle out of an agreement.

The government below, citing Manocchio v. Commissioner, 710 F.2d 1400 (9th Cir. 1983), would require a "profound and unconscionable injury" before applying equitable estoppel.

How many nails are required before an injury becomes both profound and unconscionable?

How many times may a government attorney freely switch sides before the injury becomes both profound and unconscionable?

How many Kamman letters may be written before the injury becomes both profound and unconscionable? Appendix, Volume II, page 74, et. seq.

How many hundreds of millions of dollars must be lost by investors before the injury becomes both profound and unconscionable?

PRAYER

The Petitioners pray that the Court accept this Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, and that the Court hear this case, and that the Court find for the Petitioners with the relief as prayed below, viz., that there is no partnership item adjustment to ordinary income for Wolverine, Ltd. for the 1983 taxable year and that there is no partnership item adjustment to ordinary income for Woodchuck, Ltd. for the 1983 taxable year.

This Petition is respectfully submitted.

January 20, 1995
Date

Sheldon M. Sisson

FILED
JUL 26 1995

NO. [redacted]

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

WOLVERINE, LTD., SHELDON M. SISSON, A PARTNER OTHER THAN TAX MATTERS PARTNER; WOODCHUCK, LTD., SHELDON M. SISSON, A PARTNER OTHER THAN TAX MATTERS PARTNER,

PETITIONERS

V.

COMMISSIONER INTERNAL REVENUE SERVICE,

RESPONDENT

APPENDIX, VOLUME I OF II, TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Rule 14 (k)(ii):

The United States Tax Court denied the following motions made by Petitioners in this case, endorsing the Petitioners' motions "denied," without the entry of an order.

Each motion was filed in Wolverine, Ltd., Sheldon M. Sisson, a partner other than the tax matters partner and Woodchuck, Ltd., Sheldon M. Sisson a partner other than the tax matters partner v. Commissioner of Internal Revenue, Docket No. 26539-90.

1. "Objection to the Assignment of This Case to Judge Mary Ann Cohen and Motion that the Chief Judge of the United States Tax Court Assign This Case to a Judge Other Than Mary Ann Cohen, [all capitals in the original]" filed April 26, 1991 and denied May 1, 1991.

2. "Motion for Reconsideration of Findings of Fact and Opinion, [all capitals in the original]" filed December 24, 1992 and denied December 30, 1992.

3. "Motion to vacate or revise decision, [all capitals in the original]" filed January 4, 1993 and denied January 4, 1993.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WOLVERINE, LTD., Sheldon M. Sisson, a partner other than tax matters partner; WOODCHUCK, LTD., Sheldon M. Sisson, a partner other than tax matters partner, Petitioners-Appellants, v. COMMISSIONER INTERNAL REVENUE SERVICE, Respondent-Appellee.	No. 93-70367 Tax Ct. No. 26539-90 MEMORANDUM*

Appeal from the United States Tax Court
Mary Ann Cohen, Tax Court Judge,
Presiding

Argued and Submitted October 7, 1994
Pasadena, California

Before: FLETCHER, BOOCHEVER and FERNANDEZ, Circuit Judges

This is an appeal from the Tax

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Court's denial of a Petition for Readjustment of Partnership Items under 26 U.S.C. Section 6226. See Wolverine, Ltd., v. Commissioner, 64 T.C.M. (CCH) 1342 (1992). Sheldon Sisson argues that the Tax Court erred when it refused to overrule the I.R.S.'s disallowance of certain deductions taken by the partnerships in 1983.

We have carefully reviewed the record and the decision of the Tax Court, and we affirm for the reasons set forth in the Tax Court's decision November 19, 1992. [footnote]1

AFFIRMED.

[footnote] 1 The Commissioner contends that there is a defect in the prosecution of this appeal because Sisson has said that his presentation of this appeal affects only him. He says that despite the provisions of 26 U.S.C. Sections 6221-31. Sisson, a lawyer, has explained that what he meant was that he is the only partner left who has any interest in the outcome of this case. We accept that explanation.

T. C. Memo. 1992-669

UNITED STATES TAX COURT

WOLVERINE, LTD., SHELDON M. SISSON, A PARTNER OTHER THAN THE TAX MATTERS PARTNER, AND WOODCHUCK, LTD., SHELDON M. SISSON, A PARTNER OTHER THAN THE TAX MATTERS PARTNER, Petitioner v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 26539-90.

Filed November 19, 1992.

Sheldon M. Sisson, pro se.

Victor A. Ramirez, for respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

COHEN, Judge: Respondent issued Notices of Final Partnership Administrative Adjustment (FPAA) for 1983 for two partnerships: Wolverine, Ltd. (Wolverine), and Woodchuck, Ltd. (Woodchuck). On November 26, 1990, petitioner filed a Petition for Readjustment of Partnership Items Under Code Section 6226. Unless otherwise indicated, all section references are to

the Internal Revenue Code in effect for 1983, and all Rule references are to the Tax Court Rules of Practice and Procedure.

The Wolverine and Woodchuck partnerships merged on December 31, 1983; the surviving partnership was Woodchuck. For 1983, Wolverine and Woodchuck filed separate tax returns, and separate FPAAs were issued for each partnership. In this opinion, Wolverine and Woodchuck will be treated as separate partnerships. Throughout this opinion, there are discussions of the evidence presented by petitioner for the Woodchuck partnership transactions; documentation for the Wolverine transactions was not presented at trial.

The issues for decision are:

(1) Whether an extension of the period of limitations was executed by

respondent prior to the expiration of the period of limitations;

(2) whether there exists a 1983 settlement agreement that is binding between respondent and petitioner; and

(3) whether the partnerships' transactions have economic substance to support interest and maintenance expense deductions claimed on the partnership returns for 1983.

FINDINGS OF FACT

Some of the facts have been stipulated, and the stipulated facts are incorporated herein by this reference. Petitioner resided in Tarzana, California, at the time he filed his petition.

The limited partnerships, Woodchuck and Wolverine, were formed under the laws of California on August 30, 1982. Gerald L. Schulman (Schulman) was the general

partner and Sheldon M. Sisson (petitioner) was a limited partner of Woodchuck and Wolverine in 1983.

Woodchuck and Wolverine are two of hundreds of similarly structured limited partnerships organized, promoted, and syndicated by Schulman. Schulman was the general partner of each limited partnership. The Schulman partnerships were formed for the express purpose of acquiring buildings under lease to Government entities or utility companies. Schulman promoted the limited partnerships by representing, inter alia, that each partnership would claim an interest deduction in its first year substantially equal to the partners' cash capital contributions. Each first-year interest deduction was actually based upon a circular transfer of funds. The interest was purportedly paid on an

unsecured note (short-term note) to a Schulman partnership from a Netherlands or Netherlands Antilles corporation, which amount was purportedly reloaned by that partnership, unsecured and interest free, to a Panamanian corporation. In return for the "interest free deposit", the Panamanian entity would locate a building leased by a Government agency and sell that building to the partnership with favorable long-term financing (long-term note) for the purchase.

Petitioner contributed $121,010 for a limited partnership interest in Woodchuck and $96,790 for a limited partnership interest in Wolverine. The offering memorandum for the Woodchuck partnership stated that the partnership would acquire property including a building leased to the U.S. Government. The memorandum indicated that the

Woodchuck partnership would acquire the property for $9,000,000, using a 30-year, 9-percent self-liquidating nonrecourse promissory note.

On December 1, 1982, Schulman, as general partner of Woodchuck, signed a one-page promissory note to borrow $11,175,000 from Alquan Finance Company, B.V. (Alquan), at a 12-percent interest rate. The loan agreement was not signed by a representative of Alquan. Wolverine's 1983 partnership return indicated that $8,940,000 was borrowed for that partnership. The total of these two short-term notes is $20,115,000.

On March 18, 1983, Woodchuck executed with Inversiones Arena Mar, S.A., a Panamanian corporation, an Agreement to Provide Real Property and Financing. The Woodchuck offering memorandum explained the purpose of

entering into this financing agreement as follows:

> In return for this property and financing commitment, the Partnership was obligated to and did deposit on December 1, 1982, the sum of $20,115,000 with Inversiones for a term of thirteen (13) months. No later than December 31, 1983, Inversiones is obligated to return the deposit to the Partnership without interest. In order to make said deposit, on December 1, 1982, the Partnership borrowed the sum of $20,115,000 from Alquan Finance Co. ("Alquan") at an annual rate of twelve percent (12%). The Partnership will repay the principal of the loan when the deposit is returned by Inversiones.
>
> The entire sum of the capital contributions made by the Limited Partners will be used to pay (i) interest on the loan from Alquan and (ii) currently due maintenance and insurance expenses of the property.
> * * *

During 1982 and 1983, Woodchuck sold 33 limited partnership interests, raising capital contributions of $2,700,000.

Effective August 22, 1983, Schulman and the Internal Revenue Service (IRS)

entered into a Settlement Plan Agreement (Settlement Plan), setting forth concepts upon which formal settlement agreements would be drafted for Schulman's individual tax returns for 1976 through 1983. Although the Settlement Plan was negotiated on the basis of Schulman's tax returns, the plan was to affect settlements offered to other investors in Schulman partnerships. The Settlement Plan included the following:

> 2.5 This document is intended to be an agreement in principle establishing the concepts upon which a formal settlement agreement will be drafted.***
>
> * * * * * * * *
>
> Subject to the terms and conditions herein, the parties hereto agree as follows:
>
> 3.1 IRS shall allow each investor to deduct seventy percent (70%) of the claimed Investor First Year Deduction. No adjustment shall be made to Additional Investor First Year Deduction. The disallowed portion of the Investor First Year Deduction [thirty percent (30%)] shall be deducted by each investor ratably over the term of the

SCHULMAN Partnership Long Term Notes
* * *

* * * * * * * *

* * * This Settlement Plan Agreement is intended to be used for settlement purposes only and both IRS and SCHULMAN agree that the Agreement, discussions held prior to and in connection with the Agreement, and all schedules and materials previously submitted by SCHULMAN to the Appeals Office (Before the date of the execution of this Agreement) in connection with the settlement discussions shall not be used in any manner whatsoever in any administrative or court proceeding. * * *

* * * * * * * *

IRS and SCHULMAN agree to exercise the utmost good faith in attempting to settle and resolve the matters described in this Agreement and to execute such documents as are reasonably required to complete phase II of the settlement plan.

Petitioner was legal counsel for Schulman as well as a limited partner in Wolverine and Woodchuck. On August 23, 1983, petitioner sent a letter to Schulman regarding the Settlement Plan Agreement as follows: "It is my understanding that for 1983 the

deductions to be claimed by the partnerships, which are the subject of this letter, will conform to the principles of the agreement for 1977-1982 and it is anticipated that this agreement will be applied by the Internal Revenue Service to 1983."

After the Settlement Plan with Schulman was signed and on September 6, 1983, Miramar Investments negotiated for the purchase of real property located at 160 E. 7th Street, Chester, Pennsylvania (the Chester property), for $4,210,000 from Boyd C. Wagner (Wagner). The property was already leased to the General Services Administration (GSA) under a noncancelable 20-year lease with one 10-year renewal option. During the negotiations with Wagner, Miramar Investments was represented by Schulman and by Philip November (November), vice

president of Miramar Investments. November was an agent of Schulman. On December 23, 1983, Woodchuck entered into a nonrecourse installment-purchase agreement with Miramar Investments to acquire the Chester property for $9,000,000. The price was payable over 30 years at an interest rate of 9 percent. The agreement was signed by November and Schulman.

On December 30, 1983, the sale of the Chester property was completed between Wagner and Miramar Investments and, on that same date, the GSA lease was assigned to Miramar Investments.

On December 31, 1983, Woodchuck merged with Wolverine; the surviving partnership was Woodchuck. Woodchuck retained the same assets, capital structure, debts, and limited partners as Wolverine.

On an unspecified date, Schulman signed an agreement for Woodchuck to pay $33,075 to Postal Management Services Company for management services and for obtaining insurance. Schulman was sole proprietor of Postal Management Services Company. Schulman signed both as general partner of Woodchuck and on behalf of Postal Management Services Company; there were no other signatures on the agreement. The building was insured against fire and other damage. Woodchuck's 1983 partnership return listed $33,075 as maintenance and insurance expense; Wolverine's return listed $26,460 for those items.

Woodchuck's Form 1065 "Partnership Return of Income" for 1983, dated April 11, 1984, was received by the IRS Fresno Service Center on April 18, 1984. (A copy of Wolverine's Form 1065, stipulated

as a joint exhibit, was neither dated by petitioner nor date stamped by the IRS.) The following deductions were itemized on the 1983 partnership returns:

Partnership	Note Payable	Interest Expense
Woodchuck	$11,175,000	$1,016,925
Wolverine	8,940,000	813,540

Schulman, as the tax matters partner, signed and date stamped respective Forms 872-O "Special Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership" for Woodchuck and Wolverine on November 4, 1986. Stanley S. C. Kong (Kong), an agent for the IRS, signed and manually dated the same forms on November 20, 1986. Approximately 200 Forms 872-O were signed and dated by Schulman and Kong in this manner. The forms were signed prior to the expiration of the

period of limitations; however, copies of these completed forms were not mailed to petitioner until requested by petitioner, which was sometime after April 15, 1987.

OPINION

Statute of Limitations

Petitioner asserts that the statute of limitations bars the assessment of tax on partnership income for 1983. Section 6229(a) sets out the applicable period of limitations as follows:

> (a) General Rule.--Except as otherwise provided in this section, the period for assessing any tax imposed by subtitle A [applicable here] with respect to any person which is attributable to any partnership item (or affected item) for a partnership taxable year shall not expire before the date which is 3 years after the later of--
>
> (1) the date on which the partnership return for such taxable year was filed, or
>
> (2) the last day for filing such return for such year (determined without regard to extensions).

Section 6229(b) allows the period of

limitations to be extended as follows:

> The period described in subsection (a) (including an extension period under this subsection) may be extended--
>
> (A) with respect to any partner, by an agreement entered into by the Secretary and such partner, and
>
> (B) with respect to all partners, by an agreement entered into by the Secretary and the tax matters partner (or any other person authorized by the partnership in writing to enter into such an agreement),
>
> before the expiration of such period.

Section 7502 defines the method for determining when a partnership return was filed as follows:

> SEC. 7502. TIMELY MAILING TREATED AS TIMELY FILING AND PAYING.
>
> (a) General rule.--
>
> (1) Date of Delivery.--If any return *** required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of the internal revenue laws is, after such period or such date, delivered by United States mail to the agency, officer, or office with which such return *** is required to be filed, or to which such payment is required

to be made, the date of the United States postmark stamped on the cover in which such return *** is mailed shall be deemed to be the date of delivery or the date of payment, as the case may be.

(2) Mailing Requirements.--This subsection shall apply only if--

(A) the postmark date falls within the prescribed period or on or before the prescribed date--

(i) for the filing (including any extension granted for such filing) of the return ***

* * * * * * * *

(B) [and] the return *** or payment was, within the time prescribed in subparagraph (A), deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the agency, officer, or office with which the return *** is required to be filed, or to which such payment is required to be made.

The expiration of the period of limitations on assessment is an affirmative defense, and the party raising it must specifically plead it and carry the burden of proving its applicability. Rules 39, 142(1);

Amesbury Apartments, Ltd. v. Commissioner, 95 T.C. 227, 240-241 (1990). To establish this defense, the taxpayer must make a prima facie case establishing the filing of the partnership return, the expiration of the statutory period, and the mailing of the notice after the running of the period. Id.

In this case, the actual dates of filing of the partnership returns are not established in the record. For Woodchuck, the return was due April 15, 1984, dated April 11, 1984, and received by the IRS on April 18, 1984. Petitioner testified that both returns were filed by the due date. In any event, the earliest date on which the period of limitations would run was April 15, 1987. Each of the Forms 872-O in the record bears November 4, 1986, as the date of

execution by Schulman and November 20, 1986, as the date of execution by Kong for the IRS.

Petitioner claims that Kong could not have executed the forms on November 20, 1986, because it is unlikely that, on that day, Kong manually signed and dated Woodchuck's and Wolverine's extensions and approximately 200 other extensions. Kong testified at trial that he signed the agreements on the date they bear. Kong was a credible witness, his testimony was uncontradicted and unimpeached, and we have no reason to reject it. We have, therefore, found as a fact that the Forms 872-O were signed on November 20, 1986, within 3 years of the date the returns were due, as is required by section 6229(b).

Additionally, petitioner asserts that the extension agreements for

Wolverine and Woodchuck are invalid because, regardless of timely execution, they were not transmitted by respondent to petitioner until the period of the statute of limitations had expired. There is no requirement that a copy of the extensions be forwarded to petitioner after execution by respondent. See Findlay v. Commissioner, 39 T.C. 580, 587-588 (1962), affd. and revd. on other issues 332 F.2d 620 (2d Cir. 1964); Holtsinger, Inc. v. Commissioner, T.C. Memo. 1986-282. The statute of limitations does not bar assessments in this case.

Settlement Plan Agreement

Petitioner also argues that a settlement agreement for the year ended December 31, 1983, was entered into and should be binding on respondent. Petitioner bases his claim on a

preliminary Settlement Plan Agreement signed by the IRS and by the general partner, Schulman, on August 22, 1983. First, petitioner argues that section 7121 allows such agreements to be entered into and that the Statement of Procedural Rules, 26 C.F.R. sec. 601.202 (1992), allows such settlements to be entered into prospectively. Second, in his reply brief, petitioner argues that the 1983 Settlement Plan Agreement should be enforced against the IRS by estoppel.

Section 7121 provides authority for the IRS to enter into closing agreements "with any person relating to the liability of such person." The Settlement Plan was signed by Schulman and by the IRS prior to the time that the Woodchuck and Wolverine partnerships began operations. It is not a closing agreement in form or effect. See Estate

of Magarian v. Commissioner, 97 T.C. 1, 4-6 (1991); Zaentz v. Commissioner, 90 T.C. 753, 760-762 (1988).

Respondent contends, and we agree, that petitioner was not offered and did not accept a specific settlement. The agreement between the IRS and Schulman was not a final settlement. The Settlement Plan Agreement was a conditional and precursory agreement between Schulman and the IRS. The agreement stated: "This Settlement Plan Agreement is intended to be used for settlement purposes only and both IRS and SCHULMAN agree that the Agreement *** shall not be used in any manner whatsoever in any administrative or court proceeding."

In Klein v. Commissioner, 899 F.2d 1149 (11th Cir. 1990), affg. an unpublished Tax Court order, the court

held that a binding settlement between the taxpayer and the IRS did not exist where the IRS had sent the taxpayer two letters, one of which was a "conditional offer of settlement which would become binding upon the execution of another document, a closing agreement" and the other of which did "not meet any of the requirements set forth in the statutes governing settlement of tax disputes." Id. at 1153. The court found that "these letters do not form a valid binding agreement under the tax code." Id.

In Segry v. Commissioner, T.C. Memo 1990-442, the IRS sent to the taxpayers pro forma closing agreements that the taxpayers signed and returned to the IRS; this Court held that the IRS was not bound to the terms of a settlement agreement because the taxpayers knew at the time of their signing that the

agreement might be altered at a later date. This Court did "not believe that there was a complete meeting of the minds as to all details of the settlement." Id.

In Nelson Bros., Inc. v. Commissioner, T.C. Memo. 1991-52, counsel for respondent stipulated at trial to a settlement for 1980 and 1981, the years that were before the Court. Counsel also indicated that the same issues were pending for 1982 through 1985. Also at trial, counsel stated that he would settle 1982 and 1983 on the same basis as the 1980 and 1981 settlement and that he would suggest to the examination division to use that settlement in their examination of 1984 and 1985. In a subsequent proceeding before this Court, we held that the original settlement applied only to the years before the

Court at the time the settlement was entered into, 1980 and 1981. We stated:

> While the parties may have intended to be bound by the Settlement with respect to recurring issues in the years 1982 and 1983, the Settlement terms were incomplete and indefinite with respect to the issues in those years. Therefore, we conclude that the parties are not bound by the Settlement with respect to the issues in the years 1982 and 1983.
>
> With respect to the issues in the years 1984 and 1985, the testimony of *** [the taxpayer] indicates that he was aware that respondent's counsel did not have the authority to bind respondent with respect to the years 1984 and 1985 and could only recommend that the Examination Division apply the Settlement to the issues in those years. *** [Id.]

The foregoing cases are simply examples of many in which preliminary settlement negotiations failed to lead to a binding agreement. There is no basis here for reaching a different result.

Petitioner's second argument is that the Settlement Plan that was signed in

August 1983 should be enforced by this Court under the doctrine of estoppel. This Court has stated that:

> the doctrine of equitable estoppel is applied against the Government "with the utmost caution and restraint." See Estate of Emerson v. Commissioner, 67 T.C. 612, 617-618 (1977), and cases cited thereat. *** A key condition is detrimental reliance by the party claiming the benefit of the doctrine on the action of the Government. See Hudock v. Commissioner, 65 T.C. 351, 363 (1975). *** [Boulez v. Commissioner, 76 T.C. 209, 214-215 (1981), affd. 810 F.2d 209 (D.C. Cir. 1987).]

Thus, estoppel requires a finding that a claimant relied on the Government's representations and suffered a detriment because of that reliance. Schuster v. Commissioner, 312 F.2d 311 (9th Cir. 1962), affg. 32 T.C. 998 (1959), revg. First Western Bank & Trust Co. v. Commissioner, 32 T.C. 1017 (1959); Boulez v. Commissioner, 76 T.C. 209 (1981), affd. 810 F.2d 209 (D.C. Cir.

1987); Estate of Emerson v. Commissioner, 67 T.C. 612, 617-618 (1977); Underwood v. Commissioner, 63 T.C. 468 (1975), affd. 535 F.2d 309 (5th Cir. 1976); Boyd v. Commissioner, T.C. Memo. 1992-626.

Boulez v. Commissioner, supra, involved an oral agreement with an IRS agent that notices of deficiency would not be issued if the taxpayer, a renowned conductor and composer, would amend his income tax returns so as to treat amounts paid to his agent/corporation as payments made directly to the taxpayer. Based on the revenue agent's representations, the taxpayer amended his returns in that fashion and also assumed a liability previously held by the agent/corporation. The IRS agent did not have authority to bind the IRS, and this Court refused to use the doctrine of equitable estoppel to bind the IRS to its agent's statement

under those facts. The Court stated:

> The mere fact that petitioner included amounts in his gross income and paid taxes thereon which he might otherwise have not so included or so paid is not, in our opinion, a sufficient detriment to warrant the application of equitable estoppel. *** [Id. at 215.]

Petitioner claims that the agreement in Boulez would have been binding if it had been in writing. We disagree; that a settlement agreement be in writing is not the only requirement for it to be binding on the IRS. See Botany Worsted Mills v. United States, 278 U.S. 282, 288-289 (1929); Estate of Jones v. Commissioner, 795 F.2d 566, 572 (6th Cir. 1986), affg. T.C. Memo. 1984-53; Gardner v. Commissioner, 75 T. C. 475, 479 (1980). In any event, the presence or absence of a writing is not a controlling factor in determining whether estoppel is appropriate.

Petitioner's only asserted reliance here was that Woodchuck and Wolverine entered into circular short-term lending transactions and claimed 70 percent of the interest as deductions on the partnerships' returns. Those deductions must be sustained, if at all, on the merits. See Davis v. Commissioner, 65 T.C. 1014, 1022 (1976); Avers v. Commissioner, T. C. Memo. 1988-176. Claiming a particular tax position over another option is not a cognizable detriment justifying estoppel against the Government. Boulez v. Commissioner, supra, at 215.

Economic substance

Petitioner argues that all money runs in a circle and, thus, that circular short-term loans transactions with foreign entities should be recognized by this Court. Petitioner contends that

$9,000,000 is the fair market value of the Chester property purchased by Woodchuck and Wolverine. Finally, petitioner argues that the partnerships were consummated for profit reasons and not solely to generate tax deductions.

For 1983, the reported losses for Wolverine and Woodchuck were attributable only to deductions for interest and maintenance expenses. The transactions between the partnerships and foreign entities account for all of the interest expense claimed by the partnerships. Because there are no depreciation deductions for 1983, the year in issue in this case, petitioner's fair market value argument is relevant only to ascertaining whether there was economic substance in the transaction between Miramar Investments and Woodchuck.

The economic reality of a

transaction, rather than the form in which it is cast, governs for Federal tax purposes. Commissioner v. Court Holding Co., 324 U.S. 331 (1945); Gregory v. Helvering, 293 U.S. 465 (1935); Grodt & McKay Realty, Inc. v. Commissioner, 77 T.C. 1221 (1981). A transaction entered into solely to generate tax benefits, with no other economic or commercial objective to support it, is given no effect for tax purposes. Frank Lyon Co. v. United States, 435 U.S. 561 (1978); Knetch v. United States, 364 U.S. 361 (1960).

Petitioner relies on Estate of Franklin v. Commissioner, 544 F.2d 1045 (9th Cir. 1976), affg. 64 T.C. 752 (1975), which states that an economic transaction will be recognized where the purchase price of real property is approximately equal to its fair market

value. Estate of Franklin involved the deductibility of interest and depreciation claimed with respect to a motel purchased by a limited partnership. The partnership agreed to purchase the motel for $1,224,000 and lease it back to the sellers. This purchase price was to be paid under a 10-year nonrecourse obligation requiring $75,000 in prepaid interest at the time of the sale, monthly installments of principal and interest approximately equal to monthly rent due under a lease, and a balloon payment at the end of the 10-year period. No cash was to change hands until the balloon payment. The Court of Appeals stated:

> An acquisition such as that of *** [the taxpayers] if at a price approximately equal to the fair market value of the property under ordinary circumstances would rather quickly yield an equity in the property which the purchaser could not prudently abandon. This is the stuff of substance. It meshes with the form of the transaction and

constitutes a sale.

> No such meshing occurs when the purchase price exceeds a demonstrably reasonable estimate of the fair market value. Payments on the principal of the purchase price yield no equity so long as the unpaid balance of the purchase price exceeds the then existing fair market value. * * * [544 F.2d at 1048.]

With respect to interest deductions in Estate of Franklin, the court stated that the absence of personal liability alone does not deprive debt of its bona fide character; interest deductions are not recognized "when it appears that the debt has economic significance only if the property substantially appreciates in value prior to the date at which a very large portion of the purchase price is to be discharged." Id. at 1049.

The economic substance analysis in Estate of Franklin has been adopted by this Court and by the Court of Appeals

for the Ninth Circuit in a number of cases involving real estate transactions, including: Beck v. Commissioner, 678 F.2d 818, 819, 821 (9th Cir. 1982), affg. 74 T.C. 1534 (1989); Marine v. Commissioner, 92 T.C. 958 (1989), affd. without published opinion 921 F.2d 280 (9th Cir. 1991); Hulter v. Commissioner, 91 T.C. 371, 390 (1988); Odend'hal v. Commissioner, 80 T.C. 588 (1983), affd. and remanded on other issues 748 F.2d 908 (4th Cir. 1984); Hilton v. Commissioner, 74 T.C. 305 (1980), affd. 671 F.2d 316 (9th Cir. 1982); Karme v. Commissioner, 73 T.C. 1163 (1980), affd. 673 F.2d 1062 (9th Cir. 1982); Finkelman v. Commissioner, T.C. Memo. 1989-72, affd. without published opinion 937 F.2d 612 (9th Cir. 1991). In each case, the deciding factor is whether the transaction was a genuine multiparty

transaction with economic substance; the courts disallowed deductions for partnership losses that resulted from depreciation and interest expense if the real estate transactions did not have economic substance.

The cases of Karme and Marine involved facts indistinguishable from those in this case (although the evidence in this case contained many gaps). In each of these partnerships, the circular transfer of funds using foreign entities to generate interest deductions for limited partnerships was based on a system created by Harry Margolis and pursued by Schulman with the assistance of petitioner. See United States v. Schulman, 817 F.2d 1355, 1357 (9th Cir. 1987); Marine v. Commissioner, 92 T.C. at 962, 969. [footnote 1 of the Court's

Opinion appears, infra, at Appendix page 43.] Petitioner has failed to show any factual difference between this case and the Marine case. Although some of the legal arguments made differ, the economic substance issue is the same.

In this case, the main components of Wolverine's and Woodchuck's losses for 1983 are the large interest deductions taken for short-term loans from a foreign entity, Alquan. According to petitioner, the short-term loans were payable at 12-percent interest over 13 months, and the interest deductions were calculated as follows:

Partnership	Loan Amount	x interest	x 70%	Deduction
Woodchuck	$11,175,000	x 13%	x 70%	$1,016,925
Wolverine	8,940,000	x 13%	x 70%	813,540

No explanation has been given for using a 13-percent rate rather than a 12-percent rate. Petitioner deducted only 70 percent of the total interest purportedly due based on the previously discussed Settlement Plan Agreement that petitioner asserts applied to the partnerships.

Here, according to the Woodchuck offering memorandum, the short-term transactions were required so that the Panamanian corporation, Inversiones, which received an interest-free loan, would arrange for the acquisition and long-term financing of property leased to Federal, State, or local governments. The only evidence of the short-term notes is a one-page promissory note for $11,175,000 signed by Schulman on behalf of Woodchuck and not signed, or even acknowledged, by any individual on behalf of Alquan. There is no copy of a loan

agreement between Woodchuck and Inversiones, and there are no copies of any loan agreements for Wolverine. The long-term debt was financed by Miramar Investments. Petitioner has shown no connection between Inversiones, which received the interest-free loan, and Miramar Investments which sold and financed the Chester property to the partnerships. None of the interest deductions for 1983 represent the interest for the long-term notes but, rather, represent only the interest for the short-term notes to foreign entities. We discuss both the long-term and short-term notes because petitioner claims that they are dependent on one another.

Using the analysis from the previously discussed Estate of Franklin case, petitioner's claim that the $20,115,000 short-term notes and

resulting interest deductions were necessary to secure the $9,000,000 financing is without merit. Petitioner asserts that the fair market value of the Chester property was $9,000,000 on the date of acquisition. Respondent introduced evidence that the value was $4,210,000. The Chester property was purchased at arm's-length from Wagner for $4,210,000 by Miramar Investments and sold, less than 4 months later, by Miramar Investments to Woodchuck for $9,000,000, more than twice the arm's-length price, under the nonrecourse installment note. The offering memorandum for Woodchuck determined, before the Chester property was even located for purchase, that the purchase price to the partnership would be $9,000,000. The $9 million December sales price was set by an installment

agreement signed by November, vice president of Miramar Investments, and by Schulman, general partner of Woodchuck. November was associated with Schulman at that time. There is no other evidence supporting this claimed value.

Marine involved the purchase by two Schulman partnerships of post offices at greatly inflated prices. We applied well-recognized principles on the valuation of real estate as follows:

> Fair market value has been defined as the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of all relevant facts. United States v. Cartwright, 411 U.S. 546, 551 (1973). This generally accepted definition of fair market value assumes that buyer and seller are separate and distinct entities having adverse economic interests. Narver v. Commissioner, 75 T.C. 53, 96 (1980), affd. 670 F.2d 855 (9th Cir. 1982). Applying these principles to the case at hand, the prices at which the partnerships purchased the post offices are not

> persuasive evidence of fair market value because Schulman controlled both sides of the transactions. *** [Id. at 982.]

Petitioner's contention that it was necessary to lend $20 million interest free in order to secure property at $5 million over its fair market value is untenable. We conclude that both the short-term circular loans and the long-term nonrecourse loans lack economic substance and that the partnership loan transactions were motivated by anticipated tax deductions and nothing more. The interest deductions relating to the short-term circular transactions were properly disallowed.

Finally, petitioner disputes respondent's disallowance of the maintenance and insurance expenses for Woodchuck and Wolverine. Petitioner asserts that the expenses were supported

by a maintenance and insurance contract that was introduced into evidence by petitioner. That contract provided that Postal Management Services Company, owned and managed by Schulman, would be paid $33,075 for Woodchuck as compensation for maintenance services and for obtaining insurance on the Chester property. (No contract involving Wolverine is in the record.) The Woodchuck agreement was signed by Schulman, as owner of Woodchuck, and by Schulman, as manager of Postal Management Services Company. No other evidence justifying the expenses was presented. This document standing alone is not sufficient evidence to support the expense deductions on the 1983 tax return.

[Footnote 1 from Appendix page 36] Petitioner was a witness in the case of Marine v. Commissioner, 92 T.C. 958 (1989), affd. without published opinion 921 F.2d 280 (9th Cir. 1991). He has

made various accusations against the persons involved in the trial of that case, including the Court, that are unsubstantiated and that will not be repeated here. It is notable, however, that his complaints against the Court, raised during the proceedings in these cases, arose out of his failure to be prepared to proceed to trial in other cases involving the Schulman transactions, Gillman v. Commissioner, docket Nos. 21948-85 and 2151-88, and Phillips v. Commissioner, docket No. 112-88. These cases wee set for trial during the same session as the Marine case but were ultimately settled.

Petitioner's attacks on one of the counsel for the taxpayers in Marine are based on that counsel's former representation of respondent. We can draw no inference from this fact. Prior to his work with the Harry Margolis system and with Schulman, petitioner represented respondent in at least one case in which Margolis represented a taxpayer. See Estate of [Nat "King"] Cole v. Commissioner, T.C. Memo. 1973-74. [End of footnote 1.]

For the foregoing reasons,

Decision will be entered

for respondent.

Supreme Court, U.S.
FILED

941265 JAN 23 1995

OFFICE OF THE CLERK

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

WOLVERINE, LTD., SHELDON M. SISSON, A PARTNER OTHER THAN TAX MATTERS PARTNER; WOODCHUCK, LTD., SHELDON M. SISSON, A PARTNER OTHER THAN TAX MATTERS PARTNER,

PETITIONERS

V.

COMMISSIONER INTERNAL REVENUE SERVICE,

RESPONDENT

APPENDIX, VOLUME II OF II, TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Sheldon M. Sisson
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Rule 14 (k)(ii):

The United States Tax Court denied the following motions made by Petitioners in this case, endorsing the Petitioners' motions "denied," without the entry of an order.

Each motion was filed in Wolverine, Ltd., Sheldon M. Sisson, a partner other than the tax matters partner and Woodchuck, Ltd., Sheldon M. Sisson a partner other than the tax matters partner v. Commissioner of Internal Revenue, Docket No. 26539-90.

1. "Objection to the Assignment of This Case to Judge Mary Ann Cohen and Motion that the Chief Judge of the United States Tax Court Assign This Case to a Judge Other Than Mary Ann Cohen, [all capitals in the original]" filed April 26, 1991 and denied May 1, 1991.

2. "Motion for Reconsideration of Findings of Fact and Opinion, [all capitals in the original]" filed December 24, 1992 and denied December 30, 1992.

3. "Motion to vacate or revise decision, [all capitals in the original]" filed January 4, 1993 and denied January 4, 1993.

SETTLEMENT PLAN AGREEMENT

1. PARTIES

This Settlement Plan Agreement is made and entered into by and between GERALD L. SCHULMAN ("SCHULMAN") and the INTERNAL REVENUE SERVICE ("IRS").

2. RECITALS

2.1 IRS is presently auditing SCHULMAN'S individual tax returns (IRS Form 1040) for the years 1976 through 1982. Additionally, IRS intends to audit SCHULMAN'S 1983 individual tax return (IRS Form 1040).

2.2 SCHULMAN is the general partner of approximately four hundred seventy-eight (478) partnerships which are engaged in the business of leasing real property to United States post offices or public utilities ("SCHULMAN Partnerships").

2.3 Each SCHULMAN Partnership

generated an ordinary loss to each limited partner in an amount equal to his investment in the SCHULMAN Partnership, which loss was taken by the investor in the year of his investment ("Investor First Year Deduction"); provided, however, certain limited partners have received a deduction in excess of his investment ("Additional Investor First Year Deduction"). The Additional First Year Deduction is based upon the following SCHULMAN Partnership items:

(a) Rental income;

(b) Depreciation on a straight line basis;

(c) Interest on the long term note; and

(d) Maintenance and insurance.

The amount of the Additional Investor First Year Deduction varied according to

the time of the limited partner's investment in the SCHULMAN Partnership.

2.4 IRS and SCHULMAN desire to amicably settle all questions relating to SCHULMAN'S individual tax returns and the deductions taken by the investors in connection with their investment in the SCHULMAN Partnerships. Notwithstanding the foregoing, Phase II as described in Paragraph 2.6 hereof may be finalized before completion of the examination of SCHULMAN'S 1040 tax returns relating to items other than post office promoter income and expenses.

2.5 This document is intended to be an agreement in principle establishing the concepts upon which a formal settlement agreement will be drafted. Both the IRS and SCHULMAN shall exercise the utmost good faith in attempting to achieve the final

settlement of the matters described herein. Nevertheless, SCHULMAN and the IRS acknowledge that the concepts established hereunder may result in unforeseen consequences which may render settlement impossible.

2.6 The parties have discussed a settlement plan which consists of Phase I and Phase II as follows:

(a) Phase I -- This phase involves (i) the execution of this Settlement Plan Agreement establishing the principles upon which a final settlement agreement will be achieved and (ii) actual verification of tax due in accordance with the principles established under the Settlement Plan Agreement. Verification shall be conducted on an expedited basis.

(b) Phase II -- Phase II shall involve (i) drafting and execution of a

final settlement agreement, (ii) communication to investors of the settlement proposal by SCHULMAN, (iii) implementation of the Partnership adjustments upon acceptance by the investors, (iv) final determination of SCHULMAN promoter income, and (v) formation of the Trust pursuant to Paragraph 3 hereof.

3. SETTLEMENT PLAN

Subject to the terms and conditions herein, the parties hereto agree as follows:

3.1 IRS shall allow each investor to deduct seventy percent (70%) of the claimed Investor First Year Deduction. The disallowed portion of the Investor First Year Deduction [thirty percent (30%)] shall be deducted by each investor ratably over the term of the SCHULMAN Partnership Long Term Notes as

defined in Paragraph 3.8 hereof.

3.2 Except as provided in Paragraph 3.1 and adjustments pertaining to items unrelated to the SCHULMAN Partnerships, IRS shall make no other adjustment to the SCHULMAN Partnership tax returns or to the investor 1040 tax returns, except for adjustments required for the issuance of refunds by IRS to investors.

3.3 Bills reflecting assessments (plus interest) and refund checks or credits (plus interest) will be simultaneously sent out by IRS to investors.

3.4 SCHULMAN will use his best efforts to effectuate the settlement with the investors and in connection therewith SCHULMAN agrees to submit proposed correspondence to investors pertaining to the settlement to the IRS.

3.5 The parties shall draft an appropriate Closing Agreement for each investor in the SCHULMAN Partnerships.

3.6 It is agreed that only "open" years shall be impacted by this Agreement and the final settlement agreement. The income tax liability, if any, for any year closed by virtue of the statute of limitations shall be and remain unchanged subject to the mitigation provisions of Section 1311, which shall be available to both parties.

3.7 SCHULMAN Promoter Income -- In order to determine SCHULMAN'S "promoter income" for the years 1977 through and including 1983 in connection with the funds invested by the limited partners and others (if any) in the SCHULMAN Partnerships, IRS and SCHULMAN have agreed upon the following audit

principles:

(a) Promoter ordinary gross income shall be equal to the excess of the total capital contributions made by the limited partners and others (if any) to the SCHULMAN Partnerships in excess of the total cash down payments for the purchase of each SCHULMAN Partnership property plus all other costs in acquiring the property, including without limitation recording fees and escrow expenses.

(b) SCHULMAN shall be entitled to deduct the following promoter expenses: (i) all commissions paid in connection with the purchase and sale of the Partnership's property provided said commissions were not deducted under Paragraph 3.7(a) above; (ii) cost of operations -- U.S.; (iii) cost of operations -- foreign; (iv) cost of

operations -- Margolis; (v) SCHULMAN Partnership losses (losses based on SCHULMAN'S interest in the SCHULMAN Partnerships); and (vi) postal management deficit for taxable years prior to 1984.

Attached hereto as EXHIBIT A [not included in the Appendix but forming part of the record in the United States Tax Court] are sample work papers embodying the aforesaid principles for the year 1981, which work papers shall serve as a model for reporting the audit results of the SCHULMAN 1040 individual income tax returns for the years 1976 through and including 1983. The scope and manner of the examination will be at the discretion of the Examination Division. In particular, all items of income, expense and loss reflected on SCHULMAN'S 1040 income tax returns for

the years 1976 through and including 1983 arising out of or in connection with Partnerships originally organized to purchase real property but which in fact did not purchase real property, shall be deleted from the aforesaid SCHULMAN 1040 returns. In the event a deficiency is determined, SCHULMAN shall pay interest as required by law; on the other hand, in the event SCHULMAN is entitled to a refund, IRS shall pay interest to SCHULMAN as required by law.

3.8 SCHULMAN Trust Income--SCHULMAN shall use his best efforts to domesticate the SCHULMAN Partnership long term promissory notes made payable to the sellers of the buildings to the SCHULMAN Partnerships ("SCHULMAN Partnership Long Term Notes"). SCHULMAN shall deposit the SCHULMAN Partnership Long Term Notes in a trust ("SCHULMAN

Trust") and IRS Form 1041 shall be filed each year. Commencing with 1977, the SCHULMAN Trust's taxable income shall be determined as follows:

(a) First: Realized SCHULMAN Trust interest income shall be computed by including all management fees received by SCHULMAN for managing the SCHULMAN Partnership properties (the aforesaid management fees shall not be reported on SCHULMAN 1040 returns) and all interest payments received by the SCHULMAN Trust pursuant to the SCHULMAN Partnership Long Term Notes and subtracting therefrom (i) all interest payments made by the SCHULMAN Trust in connection with underlying obligations (SCHULMAN Partnership Long Term Note is an all-inclusive obligation which requires the holder thereof to pay all underlying obligations) and (ii) all

payments received by the SCHULMAN Partnerships (which payments were included in SCHULMAN Partnership income) in excess of rental income received by the SCHULMAN Partnerships ("Realized SCHULMAN Trust Interest Income"). No interest shall accrue on Realized SCHULMAN Trust Interest Income.

(b) Second: All allowable expenses incurred in connection with the maintenance, management, and operation of the SCHULMAN Partnerships' properties and business operations ("SCHULMAN Trust Business Expenses") shall be deducted from Realized SCHULMAN Trust Interest Income; provided, however, SCHULMAN Trust Business Expenses must not have been utilized in computing SCHULMAN'S promoter income for the years 1977 through 1983. The difference between Realized SCHULMAN Trust Interest Income

and SCHULMAN Trust Business Expenses shall hereafter be designated "Net Realized SCHULMAN Trust Interest Income." No interest shall accrue on Net Realized SCHULMAN Trust Interest Income.

(c) Third: For each year "Net Available Cash" shall be determined by subtracting (i) all SCHULMAN Trust Business Expenses, (ii) all payments (principal and interest) made by the SCHULMAN Trust in connection with underlying notes and obligations, (iii) all payments received by the SCHULMAN Partnerships (which payments were included in SCHULMAN Partnership income) in excess of rental income received by the SCHULMAN Partnerships, and (iv) all taxes paid pursuant to Paragraph 3.8(f) hereof from all receipts of the SCHULMAN Trust pursuant to the SCHULMAN

Partnership Long Term Notes and management fees.

(d) Fourth: Net Realized SCHULMAN Trust Interest Income shall be recognized as follows:

(1) In the year of receipt by the SCHULMAN Trust, to the extent of Net Available Cash. Income tax shall be paid on the recognized SCHULMAN Trust Interest Income. The net amount of cash remaining after payment of tax shall hereafter be designated "Net After Tax SCHULMAN Trust Cash."

(2) Net Realized SCHULMAN Trust Interest Income not recognized by the SCHULMAN Trust in the year of receipt shall be recognized by the SCHULMAN Trust in any subsequent year in which there is and only to the extent of Net After Tax SCHULMAN Trust Cash. Tax shall be paid on the amount so

recognized.

(e) No tax shall be paid on any distributions made from the SCHULMAN Trust to SCHULMAN or otherwise.

(f) In addition to the income recognized under Paragraphs 3.8(a) through (d) hereof, the SCHULMAN Trust realized income shall also include the difference between the cost of the SCHULMAN Partnership property to the foreign seller and the purchase price paid by the SCHULMAN Partnership for the SCHULMAN for the SCHULMAN Partnership property ("Realized SCHULMAN Trust Short Term Capital Gain on Sale"). The Realized SCHULMAN Trust Short Term Capital Gain on Sale shall be recognized each year pursuant to the installment method of reporting as follows: The gross profit percentage shall be multiplied by the principal amortization

of the SCHULMAN Partnership Long Term Note each year.

(g) In order to secure payment of the Net Realized SCHULMAN Trust Interest Income and Realized SCHULMAN Trust Short Term Capital Gain on Sale ("SCHULMAN Trust Tax"), the parties agree as follows:

(1) The total SCHULMAN Trust Tax shall be projected utilizing the principles established in this Agreement ("Projected SCHULMAN Trust Tax").

(2) A sufficient number of SCHULMAN Partnerships projected to receive rents equal to one hundred twenty percent (120%) of the Projected SCHULMAN Trust Tax shall each execute an assignment of rent in favor of the Internal Revenue Service ("SCHULMAN Partnership Assignment of Rent"); provided, however, the SCHULMAN

Partnership Assignment of Rent shall be for security purposes only and shall become effective only in the event the SCHULMAN Trust defaults in the payment of tax due hereunder. Each SCHULMAN Partnership Assignment of Rent shall be in recordable form and shall be recorded in the county in which the SCHULMAN Partnership owns real property.

(3) As SCHULMAN Trust Tax is paid by the SCHULMAN Trust, the IRS shall fully release and terminate those SCHULMAN Partnership Assignments of Rent representing rents in excess of one hundred twenty percent (120%) of the projected SCHULMAN Trust Tax. Any termination or release of a SCHULMAN Partnership Assignment of Rent as required hereunder shall be a full release and termination of the particular SCHULMAN Partnership

Assignment of Rent involved.

(4) The SCHULMAN Partnership Assignment of Rent shall contain a self executing subordination clause permitting SCHULMAN, the SCHULMAN Partnerships, and the SCHULMAN Trust to refinance underlying encumbrances arising out of and in connection with the purchase of the SCHULMAN Partnership property so long as IRS always remains secured to the extent of one hundred twenty percent (120%) of the Projected SCHULMAN Trust Tax. Further, IRS shall execute such further subordination documents as are reasonably required to permit refinancing of the aforesaid underlying encumbrances.

(5) In the event the SCHULMAN Trust defaults in the payment of SCHULMAN Trust Tax, the IRS, pursuant to the SCHULMAN Partnership Assignment of

Rent, shall (a) collect the assigned rents, (b) deposit said rent in the SCHULMAN Trust, (c) pay all SCHULMAN Trust Business Expenses, (d) pay all underlying encumbrances then due, and (e) collect the SCHULMAN Trust Tax then due. The balance, if any, shall be distributed to SCHULMAN; provided, however, any tax owed by SCHULMAN on his 1040 returns may be collected by the IRS in accordance with applicable law.

(h) The SCHULMAN Trust shall file federal income tax returns (IRS Form 1041) for 1977, 1978, 1979, 1980, 1981, and 1982, which returns shall be filed concurrently with the execution of the Phase II final settlement agreement. Thereafter, the SCHULMAN Trust shall file federal income tax returns (IRS Form 1041) in accordance with law. Interest shall be paid on overpayments

or deficiencies by the SCHULMAN Trust or the Internal Revenue Service as applicable, in accordance with law; provided, however, no interest shall accrue on (1) Realized SCHULMAN Trust Interest Income and Net Realized SCHULMAN Trust Interest Income as defined in Paragraphs 3.8(a) and (b), and (2) Realized SCHULMAN Trust Short Term Capital Gain on Sale as defined in Paragraph 3.8(f) hereof. No penalty of any kind whatsoever shall be assessed against the SCHULMAN Trust for taxable years prior to 1984. SCHULMAN Trust tax returns for the years 1977 through and including 1983 shall be filed with and processed by the Special Procedures section, Los Angeles, California.

3.9 Commencing January 1, 1984, SCHULMAN shall not, directly or indirectly, organize, assist in the

organization of, or participate in the sale of any interest in (i) a partnership or other entity, (ii) any investment plan or arrangement, or (iii) any other plan or arrangement if such partnership, entity, plan or arrangement is an abuse tax shelter as defined by the Internal Revenue Code, utilizes a non-U.S. entity as part of the plan or arrangement, or involves sales which are not at arm's length or at fair market value ("Prohibited Tax Shelter Activity"). For purposes herein, a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement which (i) does not utilize a non-U.S. entity, (ii) involves arm's length sales at fair market value and/or arm's length seller financing, and (iii) utilizes financing from a chartered United States bank,

federal or state savings and loan association, federal or state thrift institution, United States insurance company, domestic money market fund, or domestic pension plan shall not be a Prohibited Tax Shelter Activity; provided, however, such activity must not be an abusive tax shelter as defined under the Internal Revenue Code.

Appropriate language shall be drafted for the Phase II final settlement agreement granting to the IRS sufficient equitable remedies to enable IRS to enjoin SCHULMAN if SCHULMAN in fact engages in any such Prohibited Tax Shelter Activity. Further, IRS shall keep confidential all provisions of this subparagraph unless disclosure is required by law; provided however, in the event SCHULMAN breaches the terms of this subparagraph, IRS may make such

disclosures as are necessary to enforce its rights hereunder.

The penalty provisions under Section 6700 of the Internal Revenue Code shall be applicable to any breach of this subparagraph.

3.10 SCHULMAN shall on an expedited basis copy and turn over to the IRS all SCHULMAN Partnership documents listed on EXHIBIT B [not included in the Appendix but forming part of the record in the United States Tax Court] hereto for each SCHULMAN Partnership for all open years ("SCHULMAN Partnership Documents"); provided, however, SCHULMAN need not copy and turn over SCHULMAN Partnership documents previously turned over to the IRS.

SCHULMAN shall deliver SCHULMAN Partnership Documents to the IRS on a daily basis. Further, SCHULMAN shall

complete the copying and delivery of the SCHULMAN Partnership Documents to the IRS within thirty (30) working days from the date hereof. For convenience only, SCHULMAN Partnership checks issued in years subsequent to the initial year of the Partnership's organization (item 6 on EXHIBIT B) shall be copied and delivered to IRS after all other SCHULMAN Partnership Documents have been delivered to the IRS.

Following the complete delivery of all SCHULMAN Partnership Documents described above, all records listed on EXHIBIT C [not included in the Appendix but forming part of the record in the United States Tax Court] hereto in SCHULMAN'S possession shall be copied on an expedited basis and delivered to the IRS within thirty (30) working days from the date hereof.

4. CONDITIONS

4.1 The obligations on the part of the parties hereto to enter into Phase II described in Paragraph 2.6 hereof are subject to the fulfillment of the following conditions:

(a) IRS and SCHULMAN must be satisfied that the taxes determined to be due under the terms of the within settlement proposal are reasonable under all of the circumstances; provided, however, it is agreed that (i) SCHULMAN Trust income for 1983 and subsequent years will be determined in accordance with the terms of this Agreement and the result of said determination shall not affect this Agreement, and (ii) the examination of SCHULMAN'S 1040 tax returns pertaining to non-post office items shall be accomplished at a later date and the result thereof shall not

impact this Agreement.

(b) The audit result of SCHULMAN'S 1040s for 1977 through 1982 must be acceptable to SCHULMAN and to the IRS; provided, however, it is agreed that (i) SCHULMAN'S 1040 for 1983 will be determined in accordance with the terms of this Agreement and the result of said determination shall not affect this Agreement, and (ii) the examination of SCHULMAN'S 1040 tax returns pertaining to non-post office items shall be accomplished at a later date and the result thereof shall not impact this Agreement.

4.2 In the event that the conditions described in 4.1 are not satisfied and fulfilled prior to the expiration of sixty (60) days following receipt of the records described in Paragraph 3.10 hereof (or at such

earlier time as it appears that any of the conditions will not be satisfied), any party may give written notice to the other party of the cancellation of this Agreement. In such event, the parties hereto shall have no obligation to proceed or continue with Phase II and nothing contained herein shall be deemed an admission of any fact or liability whatsoever on the part of any party hereto. This Settlement Plan Agreement is intended to be used for settlement purposes only and both IRS and SCHULMAN agree that the Agreement, discussions held prior to and in connection with the Agreement, and all schedules and materials previously submitted by SCHULMAN to the Appeals Office (before the date of the execution of this Agreement) in connection with the settlement discussions shall not be used

in any manner whatsoever in any administrative or court proceeding. It is agreed and understood that SCHULMAN Partnership records identified on EXHIBIT B and previously turned over to the IRS may be used for all purposes by the IRS.

5. GOOD FAITH REQUIREMENT

IRS and SCHULMAN agree to exercise the utmost good faith in attempting to settle and resolve the matters described in this Agreement and to execute such documents as are reasonably required to complete Phase II of the settlement plan.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and at the place set forth opposite their respective signatures.

Executed this 18th
day of August, 1983,
at Los Angeles,
California s/GERALD L. SCHULMAN

INTERNAL REVENUE SERVICE

Executed this 22nd day of August, 1983, at Los Angeles, California

BY: DISTRICT DIRECTOR

s/ WILLIAM H. CONNETT

Executed this 22nd day of August, 1983, at Los Angeles, California

BY: APPEALS OFFICE

By: s/B E TAYLOR

Title: Chief Appeals

Executed this 22nd day of August, 1983, at Los Angeles, California

BY: EXAMINATION DIVISION

By: s/[illegible] [Phonetic: C.R. VanSkysdale]

Title: Chief Examination

District Counsel
Internal Revenue Service
Western Region
Main Post Office
P.O. Box 2031
Los Angeles, California 90053

November 29 1983 CC:LA:TL
JMKamman

Martin N. Gelfand, Esquire
Hochman, Salkin and DeRoy
9011 Wilshire Boulevard
Seventh Floor -- West Tower
Beverly Hills, CA 90212

In re: Gerald L. Schulman

Dear Mr. Gelfand:

This letter is a confirmation and written follow-up to our telephone conversation of Monday, November 28, 1983. My telephone call was prompted by your request of Mr. Lorin Elam as to what "Counsel wanted". Although it is distinctly contrary to my well-known nature, I have attempted to respond to your request without relying upon my usual subtleties.

It [blocking in original] was Counsel's

understanding that Mr. Hochman's initial settlement offer envisioned Mr. Schulman "getting out of the business" and spending the remainder of his natural life managing the existing postal/utility partnership/buildings [sic]. Accordingly, we proceeded, as the negotiations meandered through the laborious, tortuous path of the past year, under the assumption that part and parcel of any settlement was that Mr. Schulman will, as of 11:59 P.M., December 31, 1983, "get out of the business".

It is the uniform government consensus that Mr. Schulman is engaged in the syndication of an "abusive tax shelter". Whether or not you agree with this conclusion is irrelevant, but for the fact that any ultimate settlement must, of necessity, provide the

government with sufficient incentives to enter into the agreement. In this instance, the only [underscore in original] sufficient incentive within the other parameters discussed is the oral, written and contractual committment [sic] of Mr. Schulman that he will not engage in any [underscore in original] Title 26 activity (other than filing timely and correct returns) commencing January 1, 1984. Mr. Schulman is to agree, as offered by Mr. Hochman, to do no more than "sit back and manage the existing buildings/partnerships [sic]". Any contract must provide the government with the equitable remedy of injunction together with substantial liquidated damages in the neighborhood of $50,000,000.00.

At the risk of boring you with

polysyllabic repetition Mr. Schulman will not, directly or indirectly, counsel, organize, assist in the organization of, or participate in the sale of any interest in a partnership or other entity, any investment plan or arrangement, or any other plan or activity involving Title 26. As can be seen, we envision a very broad, comprehensive and all-inclusive proscription. If this is acceptable, "we have a deal".

Counsel's concern and requirement are as outlined above. With respect to the refinancing and "trust" questions, I suggest you discuss these matters with Mr. Elam. If you have any other questions, please telephone me at (213) 688-4636.

Sincerely,

s/JAMES M. KAMMAN
Attorney